

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503  
Boston, MA 02108

ELMER CROSS,  
Appellant

v.

D-10-340

DEPARTMENT OF  
WORKFORCE DEVELOPMENT,  
Respondent

Appellant's Attorney:

Irena W. Inman, Esq.  
Lovenberg & Associates, PC  
11 Beacon Street, Suite 625  
Boston, MA 02108

Respondent's Attorney:

Michael E. Williams, Esq.  
Director of Labor Relations  
EOLWD  
19 Staniford Street: 5<sup>th</sup> Floor  
Boston, MA 02114

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

The Appellant, Elmer Cross, pursuant to G.L. c.31, § 43, filed an appeal with the Civil Service Commission on December 8, 2010, contesting a written warning that he received from the Department of Workforce Development. A pre-hearing conference was held on January 11, 2011.


It is undisputed that the Appellant is not a permanent tenured civil service employee. Rather, he is a provisional employee serving in the civil service position of Job Specialist III.

In the case of a provisional employee, such as Mr. Cross, there is “no tenure, no right of notice of hearing, no restriction of the power to discharge.” Dallas v. Commissioner of Public Health & others. 1 Mass. App. Ct. 768, 771 (1974), referring to Sullivan v. Commissioner of Commerce and Dev. 351 Mass. 462, 465 (1966). The same standard applies when a less severe disciplinary action is imposed.

Further, even if the Appellant was a permanent civil service employee, the disciplinary action taken here was limited to a written warning. As he has not been discharged, removed, suspended, demoted, transferred or lowered in rank or compensation, the Commission would not have jurisdiction to hear his appeal.

As the Commission lacks jurisdiction to hear this appeal, the appeal is hereby *dismissed*.

Civil Service Commission

  
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Christopher C. Bowman  
Chairman

By vote of the Civil Service Commission (Bowman, Chairman, Henderson, McDowell and Stein, Commissioners) on January 27, 2011.

A true Copy. Attest:

  
\_\_\_\_\_  
Commissioner  
Civil Service Commission

**Commissioner Marquis was  
absent on January 27, 2011**

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30)

days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

Irena W. Inman, Esq. (for Appellant)

Michael E. Williams, Esq. (for Appointing Authority)